

Workers' Compensation Training Perspectives

Newsletter from the Office of Monitoring, Audit and Enforcement

Maine Workers' Compensation Board

January 2015

Volume 1, Number 3



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The general mission of the Maine Workers' Compensation Board is to serve the employees and employers of the State fairly and expeditiously by ensuring compliance with the workers' compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation and facilitating labor-management cooperation.

Compliance Training for Employers/Insurers

Open training sessions for 2015 have been scheduled for January 29-30, April 23-24, June 25-26, and October 29-30, all held at the Maine Department of Labor, 45 Commerce Drive in Augusta. Please contact Anne Poulin to reserve a spot at any of these sessions.

The Board also continues to be busy doing on-site training for insurers, self-insurers, and third party administrators. If you are thinking about on-site training for your organization in 2015, please contact Gordon Davis. With advance planning, the Board can sometimes schedule multiple trainings in one trip, thereby reducing the cost.

Training modules are also available on the Board's website: www.maine.gov/wcb (click on "Training Modules" on the right side of the home page).

Topic of the Month – Fringe Benefits

Now that the Board requires the Fringe Benefits Worksheet (WCB-2B) to be filed along with the Wage Statement (WCB-2), benefit calculation when fringes are discontinued is tracked more closely in audit, thus accurate benefit calculation in those situations is important. Please bear in mind:

- If fringe benefits are discontinued, the employer's cost of the lost fringes at the time of the injury must be added to the AWW. If that results in increased compensation, an amended WCB-2 is required.
- The weekly compensation rate based on AWW without fringes included is subject to a max rate of 100% of the State average weekly wage, adjusted every July 1. The max rate with fringes included is subject to a max rate of two-thirds of the SAWW at the time of injury, not subject to further adjustment.
- You must calculate compensation both with and without fringes, then apply the respective max rates, and pay the greater. If the employee is out on varying partials, compensation must be calculated both ways each week, as either could be greater depending on the earnings.

Examples of fringe benefits are employer-paid health, dental, and life insurance, 401(K) plans, pension plans, automobiles and housing provided for personal use, and education and training. Reimbursement to the employee for mileage, meals, lodging, etc., for expenses incurred on behalf of the employer are not considered fringes and not included in AWW calculation.

Please refer to the October 2014 *Training Perspectives* newsletter for a discussion of the Fringe Benefits Worksheet (WCB-2B). This form should be filed with all wage statements, including those from concurrent employers, even if fringes are not discontinued.

Medical Fee Schedule Annual Update

The Board has completed its annual update of the medical fee schedule. Facility inpatient fees are effective for dates of discharge on or after 10/1/14 through 9/30/15. Professional fees and outpatient facility fees are effective for dates of service on or after 1/1/15 through 12/31/15. The updated fees are available on the Board's website at www.maine.gov/wcb/.

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The Board welcomes your feedback, suggestions, and other input regarding this publication or its training program. Please email Gordon Davis with your comments.

Forms Forum – WCB-8 (21-day) Certificate of Discontinuance or Reduction of Compensation Pursuant to §205(9)(B)(1)

A Certificate of Discontinuance or Reduction of Compensation (WCB-8) is required when benefits are discontinued or reduced and the employee has not returned to work at the employer of injury or has returned to work with restrictions/limitations earning less than their average weekly wage (but not as a result of the restrictions/limitations). Note this form may not be used when benefits are being paid pursuant to an order or award, or compensation payment scheme.

Copies of the WCB-8 must be sent to the Board and to the employee via certified mail no less than 21 days prior to the effective date of the discontinuance or reduction. Do not count the date of mailing – add 21 days to the date of mailing (box 28) to determine the effective date. Remember to include the supporting documentation for the discontinuance or reduction as the discontinuance or reduction is invalid without it. Also, be sure to keep a copy of the certified mail receipt in your file as the date mailed in box 28 must match the receipt.

If the reduction or discontinuance is based on earnings when an employee returns to work for a different employer, form 231-A (Employee's Return to Work Report) must be included. See the Board's Forms Manual for more instruction.

Other examples of when the form must be used is when an employee has a full-duty release but refuses to return to work, or if the employee returns to work with restrictions/limitations making less than his/her average weekly wage because he/she declines to work optional overtime (which he/she did work prior to the injury), or if reduced earnings are strictly due to economic conditions (such as overtime no longer being available which was available before the injury).

Note box 21 (compensation paid to date of certificate) plus box 22 (compensation paid for the 21 day period) should equal the total paid for the period of incapacity in box 19.

From the (e)Mail Bag – Questions from Adjusters

Q: The employee has returned to work with a different employer earning more than his AWW, and agreed to sign a WCB-4A Consent to discontinue. Need I file a WCB-8?

A: No. However, if a WCB-8 discontinuance has been filed, the Consent can not be effective prior to the expiration of the 21-day period.

Q: Prior to the injury, the employee worked overtime and opted to take paid time off credits in lieu of cash. Would this be included as earnings on the wage statement?

A: In audit, we would consider this to be earnings and includable on the wage statement.

Q: The employee earns \$19/hr in wages and is paid \$5/hr for fringe benefits which he opts not to purchase. Would that \$5/hr be wages or fringe benefits?

A: In audit, we would consider this to be earnings. In *Ashby v Rust Engineering*, the court ruled "where an employer has contracted to pay a specific dollar amount per unit of employee time worked, such payments fall under the definition of average weekly wages, earnings or salary for purposes of calculating compensation benefits."